Supreme Court, U.S.
FILED

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No. _____

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

FRED W. ALLNUTT, SR., a/k/a Sovereign Equipment Company, a/k/a Constitution Leasing Association, d/b/a Allnutt Excavating, a/k/a JFC Excavating, a/k/a Sovereign Equipment Association

Petitioner

v.

MARK J. FRIEDMAN, Chapter 11 Trustee for the Bankruptcy Estates of Fred W. Allnutt, Sr.

Respondent

PETITION FOR A WRIT OF CERTIORARI

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31 pp

QUESTIONS PRESENTED

Whether United States Bankruptcy Court for the District of Maryland Local Bankruptcy Rule 3022-1, which provides that a Chapter 11 Bankruptcy Plan is deemed fully administered when the proponent of the plan files a "summary report of the disbursements, distributions, and transfers that have been made pursuant to the plan, improperly conflicts with 11 U.S.C. 704(9), which provides that a bankruptcy trustee must "make a final report and file a final account of the administration of the estate with the court and with the United States Trustee."

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

FRED W. ALLNUTT, SR., *Petitioner*

v.

MARK J. FRIEDMAN, Chapter 11 Trustee for the Bankruptcy Estates of Fred W. Allnutt, Sr., *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Fred W. Allnutt respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is unpublished. (App. 11) The opinion of the district court affirming the rulings of the bankruptcy court is unreported. (App. 5)

JURISDICTION

The court of appeals entered its judgment on December 21, 2000, affirming the district court's order affirming the bankruptcy court's order closing Petitioner's bankruptcy case and denying his request to reopen the bankruptcy estate. (App. 11). On February 6, 2001, the court of appeals entered its order denying Petitioner's Petition for Rehearing and Petition for Rehearing En Banc. (App. 13). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

11 U.S.C. 704(9) provides, in relevant part, that a bankruptcy trustee must "make a final report and file a final account of the administration of the estate with the court and with the United States Trustee." United States Bankruptcy Court for the District of Maryland Local Bankruptcy Rule 3022-1 provides, in relevant part, that a Chapter 11 Bankruptcy plan shall be considered fully administered upon, *inter alia*, the filing of a certification by the trustee of full administration, along with a final summary report of the disbursements, distributions and transfers made pursuant to the plan.

STATEMENT

Petitioner owned and ran a company known as JFC Excavating. On October 9, 1992 Petitioner filed a Chapter 11 petition for bankruptcy. Respondent was appointed trustee on October 27, 1992. The Bankruptcy Estate was substantial, with assets of several millions of dollars. The Trustee administered the Estate for five years, from 1993 through 1998. On or about October 22, 1998, Respondent filed a "Certification of Chapter 11 Trustee of Full Administration of Chapter 11 Trustee's Plan of Liquidation," pursuant to Local Bankruptcy Rule 3022-1. The Certification did not contain a final accounting of the Estate. On December 7, 1998, the Bankruptcy Court entered an "Order Constituting Final Decree to Close Bankruptcy Case of Fred W Allnutt, Sr." On or about December 17, 1998, Petitioner filed a motion to alter or amend "Order Constituting Final Decree to Close Bankruptcy Case of Fred W Allnutt, Sr." The Motion was denied and Petitioner filed a timely appeal to the United State District Court challenging, *inter alia*, the failure of the Bankruptcy Trustee to file a final report and final account of the Estate, as required by 11 U.S.C. 704(1) and 11 U.S.C. 1106(a)(1). The District Court affirmed the judgment of the Bankruptcy Court, and Petitioner filed a timely appeal to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the judgment of the District Court, and

subsequently denied Petitioner's Request for Rehearing and Request for Rehearing En Banc.

REASONS FOR GRANTING THE PETITION

In an unpublished opinion entered December 21, 2000, the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the United States District Court for the District of Maryland affirming the Order of the United States Bankruptcy Court for the District Of Maryland that closed Petitioner's bankruptcy case, and denied Petitioner's request to reopen the bankruptcy estate. The Court of Appeals also affirmed the order of the District Court denying Petitioner's Motion for Reconsideration.

In counsel's judgment, this case is appropriate for review on a Writ of Certiorari because it presents a conflict between a federal statute (11 U.S.C. § 704(9)) and a local bankruptcy rule (Local Rule 3022-1).

This case is also appropriate for review on a Writ of Certiorari in that it presents a conflict between the decision of the Court of Appeals for the Fourth Circuit in this case and the decision of the Court of Appeals for the Seventh Circuit.

A. Conflict between 11 U.S.C. 704(9) and Local Rule 3022-1

11 U.S.C. 704(9) requires a Chapter 7 bankruptcy trustee to "make a final report and file a final account of the administration of the estate with the court and with the United States Trustee." 11 U.S.C. 1106(a) imposes the same duty on a Chapter 11 Bankruptcy Trustee. [1]

Local Bankruptcy Rule 3022-1 provides that a Chapter 11 plan shall be considered fully administered when the trustee files a

[1] 11 U.S.C. §1106(a), in defining the duties of a chapter 11 trustee, states in pertinent part: "A trustee shall . . . perform the duties of a trustee specified in . . . 704(9) of this title. . . "

certification with the court that includes a "final summary report of the disbursements, distributions, and transfers which have been made pursuant to the plan, together with a description of other acts taken to consummate the plan"

Local Bankruptcy Rule 3022-1 does not require the filing of a "final report" or "final account" prior to the closing of the bankruptcy estate. Rather, Local Bankruptcy Rule 3022-1 permits the bankruptcy trustee to consider the bankruptcy estate fully administered when the trustee files a certification with a "final summary report." The content of a "final summary report" is not described in the local rules, but in this case, the district court simply stated that the information already filed in the case (monthly operating reports and the final report submitted by the Trustee) were sufficient and no further accounting of any type was necessary.

U.S. Bankruptcy Rule 9029(a)(1) provides that any local bankruptcy rules must be "consistent with - - but not duplicative of - - Acts of Congress. " Local Bankruptcy Rule 3022-1 is not consistent with an 11 U.S.C. §704(9) and 11 U.S.C. 1106(a)(1) because the local rule permits the bankruptcy trustee to avoid filing a final report and final account of the bankruptcy estate. As such, there is a direct conflict between the statute and the local rule that must be resolved.

B. Conflict between the decisions of Courts of Appeals

The decision of the Court of Appeals affirming the decision of the District Court implicitly, if not expressly, approved the practice of the Bankruptcy court closing the case without the filing of a final report and final accounting, as required under 11 U.S.C. 704(9).

In Re Wade, 991 F.2d 402 (1993), a case decided in the Seventh Circuit, involved a local bankruptcy rule similar to Local Rule 3022-1 in that the local rule did not expressly require a final accounting. The local rule did require, however, that the final report contain extensive information on the administration of the

estate, including (among other things) total receipts and disbursements, total disbursements made in continuing the business of the debtor, a statement detailing the property listed on the debtor's schedules (including accounts receivable), and accounting for same. *Id.* at 408; *cf.* Local Rule 3022-1. In that case, the Court of Appeals for the Seventh Circuit stated:

> At a minimum, full administration encompasses the filing of the final report. Even if the final account of the administration can be extracted from various papers filed with the court, this final account is not enough without the trustee's final report.

Id. at 408.

Since the final report that had been submitted in *Wade* did not contain the requisite financial information, the Court found that the District Court's order closing the estate had been entered prematurely.

The "final summary report" provided by Local Bankruptcy Rule 3022-1 does not require the detailed financial information that the Wade Court held was insufficient. Moreover, the closing of Petitioner's bankruptcy estate was conducted without the filing of a final account or final report, as required by 11 U.S.C. 704(9). The decision of the Court of Appeals for the Fourth Circuit affirming the decision of the district court and the bankruptcy court is therefore in direct conflict with the decision of the Wade Court. As such, the circuits are in conflict over the substance and necessity of the "final report" and "final account" that is required under 11 U.S.C. 704(9).

C. The Question Presented is Important

11 U.S.C. 704(9) and 11 U.S.C. 1106 (a) provide unambiguous direction as to what a chapter 11 trustee is required to do to consummate the administration of a chapter 11 bankruptcy case. Local Bankruptcy Rule 3022-1, seemingly in direct conflict with

both federal statutes as well as U.S. Bankruptcy Rule 9029(a)(1), attempts to abrogate the important requirement that the trustee final a final report and final account. Uniformity of decision among the federal circuits, and conformity of the local bankruptcy rules to the federal statutes, compels review of this case.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

In re:	*	
FRED W. ALLNUTT, SR.,	*	Case No. 92-5-7401-JS
Debtor.	*	Chapter 11

* * * * * * * * * * *

ORDER CONSTITUTING FINAL DECREE TO CLOSE BANKRUPTCY CASE OF FRED W. ALLNUTT, SR.

Upon consideration of (i) the Application for Final Decree to Close Bankruptcy Case of Fred W. Allnutt, Sr. filed by Mark J. Friedman, Chapter 11 Trustee for the bankruptcy estate of Fred W. Allnutt, Sr. (the "Chapter 11 Trustee") and (ii) the Certification by Chapter 11 Trustee of Full Administration of Plan and finding that substantial consummation and full administration of the Chapter 11 Trustee's Plan of Liquidation (the "Plan") has occurred pursuant to Federal Rule of Bankruptcy Procedure 3022, Local Bankruptcy Rule 3022-1 and Section 105 of the United States Bankruptcy Code.

IT IS HERBY ORDERED:

1. This final decree shall become effective, without further order from this Court, ten (10) days after a final and nonappealable judgment has been rendered in those certain adversary proceedings consolidated as Adversary No. 96-5598-JS initiated by the Debtor's wife. Final orders issued by this Court in those adversary proceedings have been affirmed by the United States District Court for the District of Maryland a further appeal is now pending before the United States Court of Appeals for the Fourth Circuit.

2. An award of final compensation is approved for any previous allowances of interim compensation under Section 331 of the Bankruptcy Code to all professional persons employed under Section 327 and Section 1103 of the Bankruptcy Code, to the

extent such previous allowances have not already been approved for final compensation based on the Plan or otherwise.

3. The Chapter 11 Trustee is allowed to compensate the Chapter 11 Trustee's Attorneys at their normal hourly rates for any additional services rendered (subsequent to September 30, 1998) and to be reimbursed for any additional expenses incurred until the case is closed subject solely to the right of the Internal Revenue Service ("IRS") to object to this Court as to any such additional fees and expenses prior to the effective date of the final decree.

4. The Chapter 11 Trustee is authorized to pay the accountants for the bankruptcy estate for the final tax return and for any other services which the Chapter 11 Trustee deems reasonably necessary (including services rendered to date but for which no application has yet been submitted to the Court) subject solely to the right of the IRS to object to this Court prior to the effective date of the final decree.

5. The Chapter 11 Trustee is authorized to execute such documents and to do such other things as may be necessary to implement and effectuate and otherwise company with any order closing this bankruptcy case.

6. The Permanent Injunction (Docket No. 35, Adversary No. 96-5598-JS) entered by this Court is hereby affirmed and incorporated herein (a copy of which is attached hereto as Exhibit A).

7. The Chapter 11 Trustee is authorized to dispose of his books and records relating to the bankruptcy case except that the Chapter 11 Trustee will permit the Debtor to retrieve, from the Chapter 11 Trustee's offices, all books and records of the JFC Excavating business currently in the custody of the Chapter 11 Trustee so long as such documents are retrieved by the Debtor within a seven (7) day period after the Chapter 11 Trustee notifies the Debtor that such documents are ready for retrieval.

8. On the date the final decree becomes effective Mark J. Friedman is officially discharged as the Chapter 11 Trustee.

9. On such date, pursuant to Federal Bankruptcy Rule 3022, the bankruptcy case of Fred W. Allnutt, Sr. (Case Number: 92-5-7401-JS) shall be closed and the bankruptcy estate and all proceedings herein shall be closed by the Clerk of this Court.

Dated: _____

_____
James F. Schneider
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

In re:	*	
FRED W. ALLNUTT, SR.,	*	Case No. 92-5-7401-JS
Debtor.	*	Chapter 11

* * * * * * * * * * *

ORDER DENYING DEBTOR'S MOTION TO ALTER OR AMEND ORDER CONSTITUTING FINAL DECREE TO CLOSE BANKRUPTCY CASE OF FRED W. ALLNUTT, SR.

Upon consideration of Debtor's Motion to Alter or Amend Order Constituting Final Decree to Close Bankruptcy Case of Fred W. Allnutt, Sr., (the "Motion") and consideration of (i) the Order Constituting Final Decree to Close Bankruptcy Case of Fred W. Allnutt, Sr., entered December 7, 1998 (the "Order") and (ii) the Chapter 11 Trustee's Application for Final Decree to Close Bankruptcy Case of Fred W. Allnutt, Sr., and finding that no cause or reason exists to alter or amend this Order, the United States Bankruptcy Court for the District of Maryland,

IT IS HEREBY ORDERED that the Motion is denied.

Dated: _____

_____
James F. Schneider
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In re: Fred W. Allnutt, Sr.	*	Case No. 92-5-7401 JFS
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FRED W. ALLNUTT	*	
* * * * * *		
v.	*	Civil Action No. WMN-99-641
* * * * * *		
MARK J. FRIEDMAN	*	
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MEMORANDUM

In this consolidated appeal, the Debtor challenges various decisions of the Bankruptcy Court including, the following: 1) the issuance of an order closing his Title 7 bankruptcy estate without requiring a "final accounting;" 2) the grant of permission to the Trustee to dispose of the bankruptcy estate's accounting records; and 3) the refusal to reopen the bankruptcy estate.[1] All of these challenges relate to a common claim, i.e., that the Bankruptcy Trustee has failed to account, either from misfeasance or malfeasance, for a significant portion of the assets of the estate.

[1] The specific orders which gave rise to the appeals are a January 22, 1999 order denying Debtor's motion to alter or amend the order constituting final decree to close bankruptcy case of Fred W. Allnutt, Sr., Paper No. 710 and, a July 29, 1999 order denying a second motion to alter or amend order denying Debtor's motion to reopen bankruptcy case, Paper No. 731.

This claim is not new, it is one that the Debtor has raised on numerous occasions over the many years that this bankruptcy case has dragged on. As early as September 1994, the Debtor came to the Bankruptcy Court offering "analyses" of the monthly operating reports submitted by the Trustee that allegedly demonstrated that significant accounts receivable were missing. The Trustee has responded to these allegations, repeatedly, explaining the alleged inconsistencies. For example, in response to the Debtor's initial allegations in September 1994, the Trustee had his accountant prepare a reconciliation that he submitted to the Court. The accountant's report explained that what the Debtor deemed to be unaccounted for receivables were, in fact, accounts receivables that had been set off against accounts payable, or accounts that were written off as uncollectible, with a tax benefit inuring to the estate. See Paper No. 412, Exhibit B. The Debtor was unsatisfied with the response, raised additional questions, to which the accountant replied. Much of this back-and-forth, charge and response is evidenced in the record now before this Court.

Also in response to the concerns raised by the Debtor, the United States Trustee for Region Four conducted an independent review of the Trustee's financial records and the reporting aspects of the estate. The investigation revealed a few minor discrepancies, but nothing of the magnitude alleged by the Debtor. See Summary of Review of Financial Records of Mark J. Friedman, Trustee for Fred W. Allnutt at 3, attached to Appellee's Supplemental Brief.[2] Upon the completion of the investigation, the United States Trustee concluded:

> Based on the review of the trustee's legal and financial records in this case, the analysts did not discover any evidence that would prove that the trustee mismanaged the

[2] The investigators found a discrepancy of $7,608 in the initial monthly operating report which constituted about 0.6% of the reported balance. In a March 1995 monthly report, a discrepancy of $13,533 was found. The Debtor alleged that there were millions of dollars of assets missing from the estate.

> administration of this bankruptcy estate or incorrectly reported information regarding his administration of the estate to this office of the court. Given the substantial consummation of the trustee's plan of liquidation as presented in the trustee's post-confirmation report, the results of this review, the additional cost to the estate for further review, and the limited benefit of additional review available to creditors, the analysts do not recommend further investigation of the trustee in regards to this matter at this time.

Id. At 29.

Despite the explanations offered by the Trustee and his accountants and the findings of the investigators for the United States Trustee, the Debtor has persisted in his assertions that there are perhaps millions of unaccounted-for dollars missing from the estate. On that basis, the Debtor asked the Bankruptcy Court to reopen the estate to allow an investigation of the allegedly missing funds. The Bankruptcy Court summarily denied that request.

A Bankruptcy Court has broad discretion in deciding whether to reopen a bankruptcy case, and the reviewing court evaluates such a decision under an abuse of discretion standard. Hawkins v. Landmark Finance Co. 727 F.2d 324, 326-27 (4th Cir. 1984). In this instance, this Court finds that the Bankruptcy Court did not abuse its discretion in not reopening the case. The Debtor's motion to reopen was premised on his allegations of misconduct on the part of the Trustee and his desire to have the conduct of the Trustee investigated. The conduct of the Trustee has been investigated, by the United States Trustee for Region Four, and no wrongdoing found. The United States Trustee also determined that no further investigation was warranted. Certainly, the Bankruptcy Court had a reasonable basis to conclude that reopening the case to reinvestigate the same allegations would be a

waste of the Court's time, as well as a waste of the resources of the estate that would otherwise be available to the creditors.[3]

This court also rejects the Debtor's argument regarding the Trustee's alleged failure to file a "Final Report." The Debtor takes issue with what the Trustee has deemed to be his Final Report on the ground that it does not provide a "final accounting" of the distribution of the estate assets. To the contrary, the Court finds that the Final Report, when considered in conjunction with the monthly operating reports submitted by the Trustee, fully complies with the requirements of Local Rule 3022-1.

The Debtor's last issue, i.e., the retention of estate records, appears to be essentially a nullity. First, it is not clear that there is such a duty on the part of the Trustee to retain the records of the estate for some defined period of time. The Debtor cites the "Manual for the United States Trustees" as authority for his position that the Trustee is required to maintain all records of the estate for at least two years after the close of the case. Appellant

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[3] Counter-evidence proffered by the Debtor as indicia of wrongdoing on the part of the Trustee was mainly in the form of the Debtor's own analyses of the Trustee's monthly reports, and the report of an "audit" conducted by "the Kemplin Group," a group of accountants hired by the Debtor to investigate his allegations. The Bankruptcy Court, drawing on its long history of interaction with the Debtor in the course of the various bankruptcy proceedings, gave little credence to the allegations of the Debtor. or those of his surrogates. After commenting upon the Debtor's proven history of tax evasion, sham transactions, obstructive behavior, and hiding of assets, the Bankruptcy Judge opined rather candidly in one proceeding, "I don't trust him. I don't believe him." Transcript of March 29. 1995 Confirmation Hearing at 133.

This Court is not well positioned to second guess the Bankruptcy Court's assessment of credibility. Even if it were, given the Debtor's deceptions in the tax matters leading up to his bankruptcy and his conduct in the bankruptcy and related proceedings, this Court would, undoubtedly, find itself concurring in that assessment. The Bankruptcy Court was not required to ignore this long history and treat every new allegation of the Debtor as one warranting a complete and thorough investigation. To do so would have completely frustrated the orderly administration of the case and would have allowed the Debtor to delay the closing of the estate indefinitely.

Brief at 10. A copy of that manual was not made a part of the record and the Trustee represents that he believes that the document referred to is the "Handbook for Chapter 7 Trustees of the Executive Office of the United States Trustee." The Court was unable to locate any authority for the position that a Chapter 11 Trustee has a duty to maintain estate records for a given period of time.

Perhaps more significant, however, is the fact that the Debtor does not appear, in any way, to be harmed by the order. The order singed by the Bankruptcy Court specifically provides that the Debtor will have the opportunity to retrieve all documents which have been provided to the Trustee related to the operation of the Debtor's former business. Thus, the Debtor himself can retain those documents that he believes must be preserved.

Finally, the Court must briefly address the Trustee's request for sanctions against the Debtor for the filing of these appeals. Although the request is not without merit, this Court, in its discretion, declines to impose sanctions. The undersigned is not clearly convinced that the filing of those appeals was motivated by bad faith. As to the central issue in the appeal, the Debtor requested a review of the discretionary decision of the Bankruptcy Court not toe reopen his case. While he should have been aware that there was little chance of his prevailing, I do not conclude that it was frivolous for the Debtor to ask for such a review. As for the peripheral issues raised in the appeal, the Debtor provided some authority for his positions. Particularly as to the "Final Report" requirement, his position did not prevail due, at least in some part, to differences between the requirements of chapter 7 and chapter 11 proceedings. The Court does not expect of the Debtor as a pro se litigant, albeit an experienced pro se litigant, full appreciation and anticipation of the significance of those differences.

For these reasons, the decisions of the Bankruptcy Court will be affirmed and this appeal dismissed. Appellee's request for sanctions will be denied. A separate order will issue.

William M. Nickerson
United States District Judge

Dated March 13, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In re: Fred W. Allnutt, Sr.	*	Case No. 92-5-7401 JFS
	*	(Chapter 11)
* * * * * *	*	
* * * * * *	*	* * * * * *
FRED W. ALLNUTT	*	
* * * * * *	*	
v.	*	Civil Action No. WMN-99-641
* * * * * *	*	
MARK J. FRIEDMAN	*	
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ORDER

In accordance with the accompanying memorandum, and for the reasons stated herein, IT IS this 13th day of March, 2000, by the United States District Court for the District of Maryland, ORDERED:

1. The orders of the Bankruptcy Court entering a Final Decree and denying the Debtor's motion to reopen are hereby affirmed:
2. That this consolidated appeal is dismissed; and
3. That the Clerk of the Court shall mail or transmit copies of this Order to Appellant and all counsel of record.

William M. Nickerson
United States District Judge

UNPUBLISHED

UNITED STATE COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-1863

In Re:- FRED W. ALLNUTT, SR.,

Debtor.

FRED W. ALLNUTT, SR., a/k/a Sovereign Equipment Company, a/k/a/ Constitution Leasing Association, d/b/a Allnutt Excavating, a/k/a JFC Excavating, a/k/a Sovereign Equipment Association,

Plaintiff – Appellant,

Versus

FRED J. FRIEDMAN, Chapter 11 Trustee for the Bankruptcy Estates of Fred W. Allnutt, Sr.,

Defendant – Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. William M. Nickerson, District Judge. (CA-99-641-WMN, BK-92-57401, AP-96-05598)

Submitted: December 14, 2000 Decided: December 21, 2000

Before WIDENER, WILKINS, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Gregory Joseph Swain, GREGORY J. SWAIN, ATTORNEY AT LAW, CHARTERED, Annapolis, Maryland, for Appellant. Mark J. Friedman, Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Fred W. Allnutt, Sr., appeals the district court's order affirming the bankruptcy court's orders closing his bankruptcy case, authorizing the trustee to dispose of books and records that Allnutt failed to retrieve, and denying his request to reopen the bankruptcy estate. Allnutt also challenges the district court's denial of his motion for reconsideration. We have reviewed the record and the opinions below and find no reversible error. Accordingly, we affirm on the reasoning of the district court. In re: Allnutt, Nos. CA-99-641-WMN; FK-92-57401; AP-96-05598 (D. Md. March 14 & May 25, 2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
February 6, 2001

No. 00-1863
CA-99-641-WMN
BK-92-57401
AP-96-05598

In Re: FRED W. ALLNUTT, SR.

Debtor

FRED W. ALLNUTT, SR., a/k/a Sovereign Equipment Company, a/k/a/ Constitution Leasing Association, d/b/a Allnutt Excavating, a/k/a JFC Excavating, a/k/a Sovereign Equipment Association,

Plaintiff – Appellant,

v.

FRED J. FRIEDMAN, Chapter 11 Trustee for the Bankruptcy Estates of Fred W. Allnutt, Sr.,

Defendant – Appellee.

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition fore rehearing and rehearing en banc is denied.

SECTION 704 (11 U.S.C. § 704)

§ 704. Duties of trustee. The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; and

(9) make a final report and file a final account of the administration of the estate with the court and the United States trustee.

SECTION 1106 (11 U.S.C. § 1106)

§ 1106. Duties of trustee and examiner.

(a) A trustee shall—

(1) perform the duties of a trustee specified in sections 704(2), 704(5), 704(7), 704(8), and 704(9) of this title;

(2) if the debtor has not done so, file the list, schedule, and statement required under section 521(1) of this title;

(3) except to the extent that the court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(4) as soon as practicable—

(A) file a statement of any investigation conducted under paragraph (3) of this subsection, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate; and

(B) transmit a copy or a summary of any such statement to any creditor' committee or equity security holders' committee, to any indenture trustee, and to such other entity as the court designates;

(5) as soon as practicable, file a plan under section 1121 of this title, file a report of why the trustee will not file a plan, or recommend conversion of the case to a case under chapter 7, 12 or 13 of this title or dismissal of the case;

(6) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information; and

(7) after confirmation of a plan, file such reports as are necessary or as the court orders.

(b) An examiner appointed under section 1104(c) of this title shall perform the duties specified in paragraphs (3) and (4) of subsection (a) of this section, and except to the extent that the

court orders otherwise, any other duties of, the trustee that the court orders the debtor in possession not to perform.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND,
LOCAL BANKRUPTCY RULE 3022-1

Rule 3022-1. Completion of the
Administration of Confirmed Chapter 11 Plans

(a) Fully Administered Plan. A Chapter 11 plan will be deemed fully administered under Federal Bankruptcy Rule 3022:

(1) after the completion of the following:

(A) six (6) months have elapsed after the entry of a final order of confirmation that has become nonappealable;

(B) the deposits required by the plan have been distributed;

(C) the property proposed by the plan to be transferred has been transferred;

(D) the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan;

(E) payment sunder the plan have commenced; and

(F) all motions, contested matters, and adversary proceedings have been finally resolved; or at another time specifically defined by the plan.

(b) Certification. A proponent of a confirmed plan that is fully administered must file forthwith a certification of full administration. The certification must include a final summary report of the disbursements, distributions, and transfers that have been made pursuant to the plan, together with a description of other acts taken to consummate the plan. The certificate must also describe any matters involving consummation of the confirmed plan that have not been fully resolved.

(c) Final Decree. The plan proponent must file with the court and serve on the United States Trustee an application for a final decree closing the case with the certificate of full administration.

(d) Progress Reports. The plan proponent shall file and serve on the United States Trustee reports of progress towards full administration of the plan until the proponent files a final certification and report. The first report must be filed six (6)

months after the entry of the order of confirmation. Subsequent reports must be filed every six (6) months thereafter.

[Effective May 1, 1997; amended effective May 1, 1999]

UNITED STATES BANKRUPTCY RULE 9029

Rule 9029. Local Bankruptcy Rules; Procedure When There is No Controlling Law

(a) Local Bankruptcy Rules.

(1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with--but not duplicative of--Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with--but not duplicative of--Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There is No Controlling Law. A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement.